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TRANSCRIPT OF RECORD

United States Court Of Appeals

TENTH CIRCUIT

No. 5662

JOHN J. SPRIGGS, SR., Appellant,

vs.

PIONEER CARISSA GOLD MINES, INC., a corporation; and GEORGE B. COLEMERE, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME and HARRY S. HARNSBERGER, Appellees.

Appeal From The United States District Court
For The District Of Wyoming

United States Court Of Appeals

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Pleas and proceedings before the Honorable Ewing T. Kerr, Judge of the United States District Court for the District of Wyoming, presiding in the following entitled cause:

JOHN J. SPRIGGS, SR., Plaintiff,

vs.

PIONEER CARISSA GOLD MINES, INC., a corporation, and GEORGE B. COLEMERE, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME and HARRY S. HARNSBERGER, Defendants.

No. 4051, Civil.

1] Complaint.

Jurisdiction.

Jurisdiction herein is conferred on this court by 28 U S C Sec 1343 to recover damages to the person and property of plaintiff because of the deprivation of rights and privileges of plaintiff, a citizen of the United States, guaranteed plaintiff by the 14nth and also the 5th Amendments to the constitution of the United States, and as well also as guaranteed by the Bill of Rights, Sections 2-6-7-8-9-20-32-33-34 of Art I Wyoming constitution; and Sec 3-907 Wyo Stat 1945; and general substantive law of the United States and of Wyoming-by acts done in furtherance of a conspiracy mentioned in Sec 47-Title 8 U S C, as hereinafter set forth.

First Cause of Action.

1 For a First Cause of Action plaintiff says this is an action to redress the deprivation under color of law of the State of Wyoming of Civil Rights guaranteed plaintiff by the 14nth and also the 5th Amendments to the constitution of the United States which forbid the taking of the property of plaintiff without due process of law, and guaranteeing to plaintiff

the equal protection of the law. And also depriving plaintiff of the same rights as guaranteed him by the Bill of Rights of the Wyoming constitution, especially Sections 2-6-7-8-9-20-32-33-34 of Art I Wyoming Constitution; and Sec 3-907 Wyo Stat 1945 and as guaranteed plaintiff by the substantive law of the United States and of Wyoming as hereinafter set forth by and thru a conspiracy of defendants done knowingly, willfully, and with a bad motive to wrong and injure plaintiff.

And further depriving plaintiff of the equal protection of the final conclusive judgments of the District Court of Fremont County, Wyoming in cases 4182 and the ancillary case No 4623 of that court; and of the final conclusive judgments of the Supreme Court of Wyoming in case 40 Wyo 524, and cases 1667 and 1776 of that same court.

And in contravention of the property rights of plaintiff as decreed in the properties known as the Carissa Groups of mining properties, located in sections 20 and 21 of Tp 29 North of Range 100 West of the 6th P M-Wyoming-more particularly designated as Mono No 1; and Mono No 2; and Oro Fino; and Jeanette; and Polly Perkins; and Eight of Diamonds; and Homestake; and the Mohamet Group consisting of the Alpine, Ben Hur, Wolverine, Charles Dickens, and J C S Lode Mining Claims; and the Lucky Strike, Hermit, Carissa, and Mono Tracts A and B,-Placer Mining Claims in Fremont County, Wyoming. And the said Barney M Tibbals did by deed delivered to plaintiff on March 3, 1933, deed and convey to plaintiff an undivided 11/24th interest in and to all of said properties, including the mining equipment, tools and machinery thereon. And defendants herein actuated by malice and ill-will, bias and prejudice towards plaintiff have willfully and with a bad motive deprived this plaintiff of his constitutional rights to the possession, use and enjoyment of his vested constitutional rights to said properties so acquired by him as aforesaid. And have likewise and by the same conduct deprived plaintiff of his good reputation, and good name; and have deprived him of his constitutional rights to be freed from neverending illegal litigation; and have deprived plaintiff of his equal right to liberty, freedom, and free speech; and denied him a jury trial as guaranteed by Sec 20, Art I, Wyoming Constitution and took away his means of livelihood, and suspended him from the right to practice his profession as attorney. And denied plaintiff his property rights in and to said above

2] described properties as acquired by plaintiff by virtue of a deed of conveyance, dated Feb 20, 1950, from Federal Gold Mining Company, and one from the executors of the Last Will and Testament of John C Spry, deceased of same date, where said grantors as prior owners of all of said properties conveyed to plaintiff any and all right title and interest, and rights of action, which said grantors had, or claimed to have in and to said properties, which would be subject to the rights conveyed to said Tibbals by the court deed of Oct 15, 1932, and the rights of his widow Anna Tibbals who likewise held a deed from Barney N Tibbals to the 13/24 interest deeded to her by said Barney N Tibbals.

2 That such deprivation of the Civil Rights of plaintiff, and his right to the possession, use and enjoyments of his vested property rights in and to the above described properties and his civil right of which he was deprived was accomplished by defendants under color of law by virtue of a judgment of the supreme court of Wyoming, dated Oct 7, 1936, in a case then pending in said court wherein Barney N Tibbals and John J Spriggs were plaintiffs and appellants, and Marshal Graham, receiver of the Midwest Mines Corporation et al were defendants and respondents, which said case is reported at 50 Wyo 277, where the said plaintiffs and appellants sought possession of the above described properties and property rights which plaintiffs had acquired by virtue of the final, absolute, conclusive judgment of the District Court of Fremont County, Wyoming in said case 4623 aforesaid on Oct 15, 1932, wherein said court obeyed the mandate of the supreme court of Wyoming in case 50 Wyo 524 by sale, deed, and confirmation of sale and deed of the said properties to Barney N Tibbals who had
3] in turn deeded and conveyed to plaintiff herein said 11/24 interests in and to all the same, That said judgment and action of the supreme court of Wyoming in said case 50 Wyo 277 was absolutely void in that the supreme court was without jurisdiction to render the particular judgment it did; and acted in excess of jurisdiction in rendering the particular judgment it did; and was further void in that is was actuated thru the bad and illegal and unconstitutional motive of bias, prejudice, partiality, and ill-will towards the said plaintiffs and appellants therein; and was a taking of the property and property rights of this plaintiff in violation of the said Fourteenth Amendment, and the Fifth Amendment to the constitution of the United states, without due process of law, and constituting a

denial of the equal protection of the law as guaranteed by said provisions of the constitution of the United States; and further deprived plaintiff of his constitutional and legal rights guaranteed to him in the Bill of Rights of the Wyoming constitution hereinbefore set out and listed in paragraph 1 of this petition, and was a taking of his property and property rights without due process of law, and a denial of the equal protection of the law as guaranteed plaintiff by both of said constitutions aforesaid.

3 Plaintiff shows the court that defendant Fred H Blume was at all of the times mentioned a judge of the supreme court of Wyoming; that defendant Harry S Harnsberger was attorney for said Marshal Graham, receiver of the Midwest Mines Corporation in said case 50 Wyo 277. That the deprivation of the Civil Rights and property rights of plaintiff thru said case 50 Wyo 277 was the result of a conspiracy between said Harry S Harnsberger, as attorney, and Fred H Blume, as judge in case 50 Wyo 277, and other persons, and judges now deceased. That said conspiracy has continued since the judgment in said case 50 Wyo 277, on Oct 7, 1936 on down to the present time, and plaintiff has ever since said date, and is now and yet deprived of all of said civil rights, and constitutional and legal rights of which he was deprived under color of law by said void decision of the supreme court in said 50 Wyo 277 aforesaid. And that the other defendants later joined in said conspiracy, as hereinafter set forth, and by and thru their participation in perpetuating the the deprivation of the said civil, legal, and constitutional rights of which plaintiff was deprived by virtue of 50 Wyo 277, plaintiff is now deprived of the same civil, legal and constitutional rights of said properties and to the possession, use and enjoyment of the same.

4 Plaintiff shows the court that on March 17, 1928, Barney N Tibbals, who was then the owner and holder of a First Trust or lien in and to all of said Carrissa mining properties set forth and described in paragraph 1 of this Complaint, with mining equipment, tools and machinery thereon filed case 4182 in the District Court of Fremont County, Wyoming, that being a court of general competent jurisdiction, with jurisdiction over the subject matter, and parties to the action, which case was entitled, Barney N Tibbals, plaintiff vs Rollin W Keys et al as executors of the Last Will and Testament of

4] John C Spry deceased, and served summons therein on March 17, 1928. That the object and purpose of said suit was to foreclose said First Trust and appropriate the properties to the satisfaction of said First Trust of Tibbals. That as provided by Sec 3-907, Wyo Comp Stat 1945, and as established by the law of Wyoming and of the United States, the said properties were and became by virtue of the summons in case 4182 on March 17, 1928 in the prior, sole, exclusive and absolute jurisdiction, custody and control of the court in said case 4182 aforesaid. That this exclusive jurisdiction over the properties and parties therein continued on until the purposes of the suit were accomplished and exhausted by final judgment, sale and deed of the properties, and confirmation of sale and deed to Barney M Tibbals on Oct 15, 1932, and then on to protect the tile of said Tibbals as purchaser at said sale, and on to protect the title of plaintiff, the grantee of said Tibbals to the 11/24 interest in all the same acquired by plaintiff thru deed from said Tibbals on March 3, 1933.

5 Plaintiff further shows the court that during all the time after March 17, 1928, no other subsequent concurrent court had jurisdiction to interfere with, obstruct, defeat, delay, modify alter or in any way molest the prior process of the court in said case 4182, and the supreme court judgment in 40 Wyo 524, establishing the First Trust and ordering sale to satisfy said First Trust, or of the court in the ancillary case in 4623 which carried out the mandate of the supreme court in 40 Wyo 524 by sale and deed of the properties to Tibbals, and that any attmpt of any such subsequent court of concurrent jurisdiction to do so was absolutely void, and without jurisdiction, and in excess of jurisdiction, is absolutely void and is no justification or authority to any such court or any person or parties whomsoever relying on or acting in pursuance of such void action of such subsequent court, and this includes and applies to all of the defendants herein.

6 Plaintiff shows the court that on Oct 17, 1929 the supreme court of Wyoming rendered its final judgment on appeal in said case 4182 aforesaid. And did therein and thereby establish the First Trust and lien of said Tibbals in and to all of the said Carissa mining properties aforesaid in the sum of $17,500. and interest, and did therein decree foreclosure of the First Trust by sale of said properties to satisfy said First Trust, as reported in 40 Wyo 524 and did order and

direct the lower court to carry out its mandate by sale of the properties to satisfy said First Trust of Tibbals.

7 Plaintiff shows the court that said Spry, deceased, owned the Federal Gold Mining Company and some of the mining claims were in the name of Spry, individually, and some in the name of said Spry owned corporation, but that the written First Trust covered all the properties in both names, and the court so found and adjudged it as one entity.

8 Plaintiff shows the court that when the mandate of the supreme court in 40 Wyo 524 reached the lower court, the Federal Gold Mining Company, represented by the same attorneys of the Spry estate in 40 Wyo 524, asked Intervention, setting up the annoying absurd claim of ownership in Federal
5] Gold Mining Company by adverse possession. The lower court denied the intervention, obeyed the mandate of the supreme court in 40 Wyo 524 and ordered all claims in both names to be sold to satisfy the Tibbals First Trust which it established at the sum of $17,500. and interest thereon at 7% per annum from April 29, 1930, the date of the judgment. The Federal Gold Mining Company appealed back to the supreme court from its denial of Intervention. This was case 1776 in the supreme court. Tibbals filed his brief, moved for dismissal, and the case on appeal was dismissed.

9 Plaintiff further shows the court that on the same day the court denied Intervention, the lower court issued a restraining order enjoining Tibbals from getting execution on the final judgment in case 4182, entered under mandate of the supreme court in 40 Wyo 524. Tibbals then filed a mandamus action, case 1667 of the supreme court to compel dissolution of the restraining order. The supreme court sustained this and the restraining order was dissolved. This gave Tibbals three final judgments of the supreme court establishing his First Trust and ordering sale to satisfy his First Trust.

10. Plaintiff shows the court that before Tibbals could get execution in case 4182, the same parties filed an ancillary case, No 4623 in the District Court of Fremont County Wyoming, entitled Federal Gold Mining Company vs Barney M Tibbals, setting up the same claim of title against Tibbals, and secured another restraining order that enjoined

Tibbals from executing the final judgment of the court in case 4182, ordering sale under the supreme court mandate in 40 Wyo 524. Tibbals applied to the supreme court for a contempt citation against both the lower court judge and the attorneys for again obstructing the process of the supreme court, 40 Wyo 524, and the District Court entering judgment on the mandate in case 4182. This was denied, and Tibbals had to undergo further endless annoying litigation.

11 Tibbals filed his answer in case 4623, set up the prior adjudications between the same parties as conclusive. Further alleged the ownership of Federal Gold Mining Company by said Spry. That it had been a party to case 4182, its president being chief attorney for Spry estate in case 4182 and like allegation. And set up this special plea to be relieved from further annoying, useless, neverending ~~litigation,~~ towit: Alleged:

"That defendant (Tibbals) has already for the Third time asserted and maintained by proper judicial procedure against the plaintiff herein, the claim, trust and lien established in the judgment, Ex "A" hereto attached and made a part hereof.

First, in suit 4182 wherein the plaintiff was in truth and fact an actual party as hereinbefore set forth.

For the second time, in the election of remedy by plaintiff in bringing his application for Intervention, wherein defendant again prevailed in the District Court, wherein the same was denied; and in the supreme court wherein the appeal was dismissed.

And again on application for a restraining order, wherein plaintiff again elected its remedy and prosecuted said action, securing the said restraining order which was dissolved by the supreme court in case 1667; and the order of the District court on March 18, 1931, being Ex "J" herein.

6] "That the defendant Tibbals has been compelled to come into court on said three prior occasions and litigate with plaintiff the identical trust, lien and claim, which he has sustained in all said proceedings against the contentions of plaintiff, which are the same properties--the same trust and lien-the same parties,-and the same issues as plaintiff

seeks in the present action to establish.

"That the defendant has been annoyed, harrassed, put to great expense and compelled to undergo great hardship; and has been delayed in the endorcement of his legal rights as established in the judgment Ex "A" hereto attached.

(This was the judgment in case 4182 rendered on the mandate of 40 Wyo 524)

"The time of the court has been taken by said proceedings, and by the election of unsuccessful remedies of plaintiff to that the defendant is entitled to be freed from further litigation--to have litigation with tho plaintiff end-to have an end to litigation with plaintiff involving the same subject matter. And the repeated, and yet repeating actions; and renewed selection of unsuccessful remedies by plaintiff has given plaintiff its day in court three times heretofore for the same cause of action, and the same subject matter.

"And the obstinate and stubborn litigant by bringing the present action has so infringed the rights of defendant Tibbals to have litigation end, that plaintiff and his action is a public nuisance.

"And the rights of defendant mingle with those of the public to such an extent that public policy, and public interests demand that the cause should go out of court--and the petition dismissed.

"And defendant is entitled to have said litigation end with the dismissal of the petition herein. And the sustaining for the Fourth Time of the trust, lien, claim of the defendant in and to said properties--all as decreed in said judgment Ex "A".

12. Plaintiff shows the court that while Tibbals was up in the supreme court litigating case 4182--40 Wyo 524- the defendants therein- the executors of the Spry estate, and the Federal Gold Mining Company, the Spry owned corporation- gave a 4 year lease, from Oct 10, 1928 to Oct 10, 1932, for mining purposes, to Midwest Mines Corporation, on the same identical mining properties involved in the prior case 4182- and 40 Wyo 524 aforesaid. That this subsequent lessee, in

addition to being a privy, bound and precluded by the final judgment in case 4182- and 40 Wyo 524--and case 4623, aforesaid, was an actual party to all of said proceedings. It supplied the restraining bonds in those cases, supplied costs for attorney fees of defendants in case 4182-and on the Intervention proceedings, and cases 1667 and 1776, and in such respects was an actual party to all those proceedings, cases 4182-40 Wyo 524, cases 1667-1776 and 4623. Further that as such subsequent lessee, it was barred by sec 3-907 Wyo Stat 1945, by the universally law of prior exclusive jurisdiction, custody and control hereinbefore set up, as decreed and established by the supreme court of the United States, by the Federal Courts, by different State Supreme Court of other States, and by the supreme court of Wyoming in prior case for other litigants under like and similar facts and conditions, from any adverse rights whatsoever as against Tibbals, and plaintiff, as his grantee aforesaid. And that under the 14 Amendment of the U S Constitution, and the Fifth Amendment, and the statutory and substantive law of the land, plaintiff Tibbals in the prior case 4182-40 Wyo 524- was freed from taking notice of or litigating with the subsequent lessee, or its receiver, any adverse claim whatsoever that such subsequent lessee might assert to these properties, and this plaintiff as grantee of Tibbals, has the same constitutional rights in such premises.

13 Plaintiff shows the court that a creditor, J J Marrin, on Nov 3, 1930 filed case 4561 in the District Court of Fremont County, Wyoming entitled J J Marrin, plaintiff vs Midwest Mines Corporation, to recover a debt of $901.25 which plaintiff claimed was owed him by Midwest Mines Corporation, and set up the other defendants claimed an adverse interest as against the plaintiff. That the plaintiff never prosecuted his action to judgment, never secured a judgment establishing his debt, or declaring the same to be a lien, or in any way complying with the lien statutes of Wyoming. That the plaintiff died in 1943, and there was no revivor of action, and since that date there has been no plaintiff in case 4561. That the franchise of Midwest Mines Corporation was forfeited by the state of Wyoming in 1933.

14 Plaintiff shows the court that in case 4561 the court did adjudge the Midwest lessee insolvent, and unable to pay the $901.25 debt, and did appoint one Marshal Graham, a creditor, inelligible under Sec 3-7302 Wyo Stat 1945, to be a receiver, appointing him without notice or hearing to the adverse parties.

That neither Barney N Tibbals, nor John J Spriggs were made parties to the action. That the petition set up the prior Trust of Tibbals as established in the judgment in case 4182, and 40 Wyo 524. That neither said Tibbals nor this plaintiff are required to take notice of this subsequent collateral case, and their prior rights are not affected by anything the court did in this subsequent collateral case.

15 Plaintiff shows the court that on application to the court in this case 4561, and also in case 4623, on an allegation that he had some interest in the properties on behalf of creditors of the Midwest Mines Corporation, he the receiver was directed to appear in case 4623 and set up such pretended claims, which he did. He filed an answer setting up that creditors of this subsequent lessee had an interest prior to Tibbals or any other party to the properties.

16 Plaintiff shows the court that on final trial in case 4623, when the court announced his finding for Tibbals, establishing his First Trust, and his judgment to foreclose the First Trust under the mandate of the supreme court in 40 Wyo 524, the attorney who had filed case 4561, as attorney for said plaintiff, and who was at the same time attorney for Federal Gold Mining Company, and the executors of the Spry estate, suing his own clients, arose and these proceedings took place;

"Attorney; We have here the receiver for creditors of the Midwest lessee who must be protected.

"The Court; Don't tell this court that. He could have no rights to these properties; the statute fixes his rights"

And thereupon the court in case 4623, for the express purpose of excluding the receiver from any claim of right to the properties did make this express decree, excluding him from any claim to any possible surplus. After making provision for the sale to satisfy the Tibbals trust, the court did decreed in express words the exclusing of the receiver from any rights whatsoever even in the surplus at the sale in the following words;

8] "And the remainder, if any there be, shall be paid to the Clerk of this court for plaintiff, (FGMC) or such

distribution between the plaintiff and the estate of John C Spry, deceased, as the court may afterwards determine in case of presentation of any adverse claims"

17 The purpose of this provision for distribution was that as part of the claims were in the name of Federal Gold Mining Company, and some in the individual name of Spry whose estate was being probated, it might be the executors for the sake of the record would want to account in probate for their part of the surplus, even tho the court had decreed one entity in fact.

18 The court did then in case 4623, obey the mandate of the supreme court in 40 Wyo 524; Did establish the Tibbals trust at $17,500. and interest at seven percent per annum from April 29, 1930, the date of the final judgment in case No 4182. Did make the judgment in case 4182 a part of the judgment in case 4623. Did decree foreclose and sale. Did find that the Federal Gold Mining Company was and had been at all times an actual party to case 4182- and 40 Wyo 524, bound and precluded thereby. Did dissolve the restraining order, and did issue a counter restraining order for Tibbals, enjoining the Federal Gold Mining Company, its officers, agents, and all others acting for or on its behalf from further interferring with Tibbals in getting execution, or molesting him, or the purchaser at the sale, from interferring with the title, or preventing Tibbals from the full enjoyment of the fruits of his judgment. And did set the day of sale at Oct 15, 1932, five days after the Midwest lease would expire on Oct 10, 1932, for the express purpose of avoiding any possible interference by the lessee or his receiver after date the lease would expire.

19 Plaintiff shows the court that the adverse parties did file a written Waiver of Right of Appeal, and ask that the judgment be final, absolute and conclusive. That the receiver Graham, who in the meantime had held a receiver's sale, and purchased all the property of the Midwest lessee, and the unexpired 6 weeks term of the lease, filed over his own signature his written ratification of the judgment, and asked sale and confirmation of sale without further notice. Plaintiff says this final judgment in case 4623 was executed by sale of the properties, and with deed, and confirmation of sale and deed to Barney M Tibbals on Oct 15, 1932. That the final judgment, sale, deed and confirmation of deed are all final, absolute

conclusive, and res judicata of the rights of said Tibbals and plaintiff as his grantee, and was not subject to relitigation by any court in any subsequent collateral proceedings, and are conclusive of the title of plaintiff to the properties acquired under the said deed from Tibbals.

19 Plaintiff shows the court that in the meantime, over in the subsequent collateral case 4561 aforesaid, to which neither plaintiff nor said Tibbals were parties, and of which he is not required to take notice of, or litigate any party therein, and is freed from litigating with defendants herein any matters or claims arising out of said case, the said Marshal Graham receiver on Sept 1, 1932, did on order of the court in case 4561, to close the receivership, sell all of the property of the Midwest lessee and all of the property claimed to be in receivership, listing the same as the mining machinery and personal property of the Midwest lessee, and listing specifically the lease which had 6 weeks unexpired term, in full satisfaction of the Marrin $901.25 claim, and all other debts whatsoever of the said lessee, and all receivership costs and demands whatsoever, including a fee of $5000. for the receiver, and a like fee of $5000. for the attorney of the receiver. The court confirmed the sale to Marshal Graham, trustee for the creditors, who purchased as such trustee, and ordered conveyance to said trustee, which was done. And the said trustee as such trustee and purchaser, without any application to or order from the court, but acting as any purchaser would do, optioned away his purchase to one Clement Quinn for the sum of $34,500.

9] 20 Plaintiff shows the court that in case 4561 the RES of the receivership, and as the same was therein adjudged in case 4561, in its sale and other proceedings, consisted only of the property of the lessee which it claimed to own and which could be sold by the court to satisfy the debts of the lessee. That at no time was the fee simple title to the property resting in Federal Gold Mining Company, and the said Spry estate included in the RES. That the fee simple title to the properties was in the sole, prior, exclusive jurisdiction, custody and control of the court since March 17, 1928 in the court in said cases 4182, and 40 Wyo 524, and cases 1667 and 1776, and the ancillary case of 4623, aforesaid. That the court in case 4561 had no jurisdiction, custody or control whatsoever over the fee simple title to

the properties which was sold by the court to Tibbals Oct 15, 1932 in case 4623 aforesaid, and the court in case 4561 well understood, accepted and abided by that law, and sold only the personal property of the lessee and the unexpired 6 weeks term of the lease. And the lease expired by the terms of its own limitations on Oct 10, 1932, which was 5 days prior to final sale, deed and confirmation of sale and deed to Tibbals in case 4623 on Oct 15, 1932.

21 Plaintiff shows the court that on or about March 3, 1933, the said Marshal Graham, then pretending to act as receiver of the Midwest Mines Corporation, lessee aforesaid, went in and took possession of all the properties which the court in case 4623 sold and deeded to Barney N Tibbals on Oct 15, 1932, as aforesaid. That said Tibbals had by a deed dated Aug 23, 1932 and delivered to plaintiff March 3, 1933 conveyed to plaintiff an undivided 11/24th interest in all of said properties which he had acquired at said court sale in case 4623 aforesaid. And that said Barney N Tibbals and John J Spriggs as plaintiffs then filed case 4871 vs Marshal Graham, receiver aforesaid, et al, in the District Court of Fremont County, Wyoming to oust said Marshal Graham, claiming as such receiver, from possession of their property.

10] 22 That this case to oust the trespassing receiver reached the supreme court of Wyoming reported at 50 Wyo 277, wherein on Oct 7, 1936, the court rendered its judgment therein denying plaintiff therein possession of their property and holding the trespasser Graham in possession. That defendant Fred H Blume was judge of the court, and defendant Harry S Harnsberger was attorney for receiver Graham. That said judgment was void and the court was without jurisdiction to render the particular judgment it did; and the court acted in excess of its jurisdiction in rendering the particular judgment it did; and the judgment was a taking of the property of plaintiff herein, and his co-litigant therein, said Tibbals without due process of law; and was a denial to plaintiff of the equal protection of the law as guaranteed plaintiff by the 14th and the 5th Amendment to the constitution of the United States; and in contravention to the legal and constitutional rights of plaintiff as guaranteed him by the Bill of Rights of the Wyoming constitution hereinbefore in paragraph 1 set up. And in contravention to the final, conclusive judgments of the supreme court of Wyoming in case 40 Wyo 524, and cases 1667 and 1776

of the same court, and the final judgment, sale, deed and confirmation of sale and deed of the properties to Tibbals in case 4623 aforesaid, and the said deed of Tibbals to plaintiff hereinbefore set up.

23 Plaintiff shows the court that in October 1936 plaintiff was a candidate for judge of the Wyoming supreme court. That he published campaign adds criticising the supreme court for its court rule requiring litigants to file copies of an abstract of the pleadings, evidence and record, where the costs were increased on appeal so that often the poor man was denied justice because of inability to pay these extra costs on appeal. And further that the costs were unnecessary, and enabled the judges to save labor from reading the official statutory record, and gave them ease. The court in its opinion, rendered just prior to election day, inserted in the opinion matters outside the issues, such as these "the costs for appeal are no more in this state than other states; the abstracts need not be printed; the life of the judge is not one of ease". The press published these as being an answer to plaintiff's campaign adds.

24 The court in rendering its void opinion in case 50 Wyo 277 aforesaid, and as an excuse to deny plaintiff and said Tibbals possession of their property, resorted to the illegal and unconstitutional procedure of creating facts and jurisdiction on which to frame its void opinion by judicial assertion. The court created by judicial assertion to false and untrue premises, namely; 1 The properties at the time of the judicial sale to Tibbals in case 4623, were in receivership in case 4561; 2 There was fraud practiced on the receiver in the sale in case 4623. And it based its opinion on these judicially created false premises, neither one of which was true in fact or law. There was not the semblance of justification either in fact or law for the existence of eaither of the false premises. The creation of these false judicial assertions was conceived by said Attorney Harnsberger and executed by said Fred H Blume, judge in case 50 Wyo 277. That thereby the good name and reputation of both plaintiff and said Tibbals was blasted, unlawfully branded with the charge of fraud, and their said property taken from them without due process of law.

11] 25 Plaintiff shows the court that said Tibbals and

Spriggs, as plaintiffs in case 50 Wyo 524 filed their petition for rehearing, setting up the insertion in the opinion of matters outside the issues; that these had been published by the press as answers to said campaign adds; that the opinion was contrary to the final conclusive judgments in 40 Wyo 524, and cases 4182, and sale and deed in case 4623, and like reasons. They asked that unbiased judges be called in to pass on the final rehearing petition. This ended up with Attorney Harnsberger suggesting to the court that plaintiff was in contempt for saying the judges were biased, and set up that portion of the petition for rehearing which set forth the above grounds. Over the protest of plaintiff Judge Blume made an order, as one of the judges of the court, permitting said Attorney Harnsberger to appear under the false guise of Friend Of The Court and prosecute the contempt. The press all over the state published big headlines that the Friends Of The Court charged that plaintiff was unfit to practice law and might be disbarred.

26 Plaintiff shows the court that at the next election when the judge of said supreme court rendering the opinion in case 50 Wyo 277, and the contempt proceedings, came up for reelection, plaintiff also became a candidate against him. He wrote a letter to the lawyers exposing the errors of the court in 50 Wyo 277, and the contempt proceedings, and for this exercise of his constitutional right of free speech guaranteed by Sec 20, Art I of the Wyoming constitution, was prosecuted and suspended from practice, his means of livelihood taken away, and his good name again blasted. That at this hearing, which was a continuation of the prior conspiracy between said Harnsberger and Blume, and others now deceased, the supreme court assigned the same identical judge who delivered the opinion in case 50 Wyo 277 as judge to hear the disbarment proceedings. The last word this judge said to plaintiff was: "Do you still say we were wrong". Plaintiff was then suspended from practice. All these contempt and suspension proceedings were a part of the said conspiracy to compell plaintiff to submit to a taking of his property without due process and to compel him to accept and bow to a denial of equal rights under the law.

27 That said conspiracy was and is a continuing conspiracy and is being perpetrated to the present day. That justice was so delayed, as forbidden by Sec 8 Art I of the Wyoming constitution, and also denied, that Tibbals and plaintiff struggled on to the death of said Tibbals in 1939, unable

to get possession of their property. That on his death bed, Tibbals deeded his 13/24th interest in the properties to his widow Anna Tibbals. That she, with plaintiff is still denied their property without due process of law.

28 That plaintiff has suffered damage in the sum of $750,000. as actaual damages.

12] 33 Plaintiff says he filed a motion to strike the answer of said Judge Harnsberger from the files as it was an illegal pleading, but Judge Lewis denied the motion. Thereafter plaintiff filed a demurrer to the answer for the same reasons and Judge Lewis denied the demurrer. That thereby the influence and weight which the office of supreme judge necessarily carries was illegally used against plaintiff, and he was thereby denied the equal protection of the law. That the said Spencer J Lewis, as judge in case 7521, and Harry H Hime, as said receiver succeeding said Marshal Graham; and Pioneer Carissa Gold Mines Inc, and George Colemere its chief officer and acting also for his personal profit joined in the aforesaid conspiracy with said Harry S Harnsberger, and Fred H Blume to perpetuate the unconstitutional taking away from plaintiff his property aforesaid without due process of law, and denying to plaintiff the equal protection of the law as guaranteed plaintiff by the 14th and the 5th Amendment to the constitution of the United States, and the Bill of Rights of the Wyoming constitution, and statutes and law of Wyoming and of the United States hereinbefore set up, under color of law by the judgment and orders in case 7521, and 4561 aforesaid, and proceeded to abuse the process of the court in said cases and did accomplish said unconstitutional purposes therein and thereby, acting wilfully, knowingly and with a bad motive to wrongfully injure plaintiff, as hereinbefore set up.

34 That on final judgment in case 7521 the said Spencer J Lewis, as judge, did render a void judgment holding the receiver in possession of the properties of plaintiff, and denying to plaintiff the possession, use and enjoyment of said properties. That in this he acted without jurisdiction; and in excess of jurisdiction. That he did thereby relitigate and overturn the final, absolute and conclusive judgments, orders and decrees of the prior courts of competent jurisdiction, acting with jurisdiction over the subject matter, which

was these same properties, and the same subject matter of possession, ownership, and use and enjoyment thereof, and the same parties and their privies, and did exercise the arbitrary power forbidden by Sec 7 Art I of the Wyoming constitution, and did arbitrarily take the property of the plaintiff and give it to the Pioneer Carissa Gold Mines Inc and H H Hime said receiver, when neither of said parties had the semblence of legal right in law thereto.

35 Plaintiff says he did appeal from the judgment of said S J Lewis in case 7521 to the supreme court of Wyoming, where said Fred H Blume was judge. That shortly before the case came before said Fred H Blume, this plaintiff met up with said Blume as said Blume was drinking cocktails at the Wyoming State Bar Meeting in Rock Springs with an Attorney named Stanton. That plaintiff extended his hand to said Blume, with a cordial and friendly greeting; How do you do Judge? But said Blume refused to take the hand of plaintiff or to speak to plaintiff. But when the appeal of plaintiff reached the supreme court, said Blume nursing extreme enmity, illwill, bias, prejudice and malice toward plaintiff sat in judgment on plaintiff and his rights on such appeal and denied the appeal. And on application for reinstatement of the appeal setting up that his property was being taken without due process of law, and
13] that he was being denied the equal protection of the law, and like grounds for relief as hereinbefore set up, the said Fred H Blume, actuated by the same bias prejudice, ill-will, and enmity toward plaintiff did again sit in judgment on the application of plaintiff for reinstatement of the appeal and deny the same. That in so doing he violated Sec 8-Art I of the Wyoming constitution guaranteeing to plaintiff justice without sale, denial or delay, and the fundamental principle of constitutional law that no judge nursing bias or prejudice toward a litigant should sit in judgment on such case. And further violated Sec 7 Art I of the Wyoming constitution forbidding the exercise of arbitrary power over the rights and property of plaintiff. And that the conduct and action of said Blume, judge therein, was void as being the result of such bad motives.

36 Plaintiff says that in June 9, 1954, the said S J Lewis as judge sat further in said case 4561 and made an order on the application of H H Hime, pretending to be receiver of the Midwest lessee, for an allowance to said receiver and his

attorney for more fees. That said S J Lewis did grant said application, and made his void order therein allowing the receiver $1400. and his attorney $1000. and directing that the same be paid out of the property of plaintiff.

37 Plaintiff shows the court that on April 22, 1955 defendant Harry S.Harnsberger filed in case 4561 an application for allowance to him of attorney fees in the sum of $15,000. plus costs and expense money. That he set up his services in securing the void judgment in 50 Wyo 277; that he had negotiated and renegotiated the void contracts and leases for the receiver to Pioneer Carissa Gold Mins Inc, defendant herein. Also set up the contempt proceeding against plaintiff, and like services for holding the trespassing receiver in possession of plaintiffs property since March 3, 1933, and under the contracts which he had so negotiated and renegotiated as he set up, the property of plaintiff had been depleted by the extraction of some $70,000. in minerals by such trespasses. That he asked for a further sum of $5000. for his said successful service to the trespassing receiver. That on June 7, 1956, the said Harrsy S Harnsberger, then a judge of the supreme court, and with the consent and most courteous reception and welcome by S J Lewis, repeatedly referring to him as Mr Justice Harnsberger, the said defendant Harnsberger did appear in person in case 4561 before said S J Lewis judge, and present and conduct his own case, pro se, as attorney, bring to his assistance all the prestige which a supreme court judge carries, and the said S J Lewise did make therein his order allowing said Harnsberger a fee of $7,500. and $500. as expenses, and did order and direct that the property of this plaintiff be sold to pay such sums to said Harnsberger.

38 Plaintiff shows the court that the widow of Marshal Graham deceased also filed a claim of $51,700 in said case for his supposed services in holding possession of the of the property of plaintiff since March 3, 1933, and for making
said contracts with defendant Pioneer Carissa Gold Mines
14] Inc, and its predecessors, whereby they depleted the
property of plaintiff taking out over $70,000. in minerals and selling and disposing of the same, and the said S J Lewis, judge, and defendant herein did make his order allowing the widow of the prior receiver $15,000. and directed that the remaining depleted property of plaintiff be sold to pay this void allowance.

38 Plaintiff shows the court that in the same case, and time, the said S J Lewise did make his order allowing the widow of the prior attorney of the receiver an additional fee of $7,500. with further $543. expense money; and a further allowance of $750. to H H Hime, as receiver; and further $400. for the attorney of Hime, and direct that all of these void allowances be paid from the remaining depleted property of plaintiff. And as a part of said order did decree as follows:

"It Is Further Ordered that the receiver prepare and deliver the the necessary instruments of conveyance to the Pioneer Carissa Gold Mines Inc. And that he deliver the same, properly executed, to said company upon receipt of the payment in full of the purchase price as set forth in the agreement.

39. Plaintiff shows the court that said S J Lewis acted without jurisdiction; and in excess of jurisdiction; that he had no jurisdiction to make said order; that neither the court nor said S J Lewis had jurisdiction over the fee simple title of this plaintiff; that he acted arbitrarily, and exercised arbitray power forbidden by Sec 7, Art I of the Wyoming constitution; and his judgment and order was a taking of property of this plaintiff without due process of law in contravention of Sec 6, Art I of the Wyoming constitution; and was a taking of the property of plaintiff without due process of law in contravention to the guaranties to plaintiff in the 14th and also the 5th Amendment of the constitution of the United States, and a denial of the equal protection of the law under the said 14th Amendment. That plaintiff was thus deprived of his said rights under color of law by the said void judicial acts of S J Lewis acting in case 4561, without jurisdiction to make the void orders aforesaid. That he acted knowingly, willfully, and thru a bad motive in combination and united instigation of the other participating defendants herein.

Plaintiff further shows the court that on Oct 18, 1956, the said S J Lewis did make a further order in case 4561, allowing the attorney of H H Hime the further sum of $337, with an order to pay it out of the remaining depleted property of plaintiff.

39 Plaintiff shows the court that in July 1956 he filed in the supreme court of Wyoming an application for a writ of prohibition to prohibit the District Court of Fremont County

Wyoming, said S J Lewis, and F B Sheldon, judges therein presiding from further holding the receiver in possession of the property of plaintiff, and to oust said receiver, and said Pioneer Carissa Gold Mines Inc from possession of plaintiff's property, showing the supreme court that his property was being taken without due process of law, and that he was being denied his constitutional rights to the equal protection of the law.

15] 40 Plaintiff shows the court that being conscious of the bias, prejudice, illwill, enmity which said Fred H Blume, then chief justice of the Wyoming supreme court, had and held toward plaintiff, and feeling that he could not receive a fair impartial hearing before the supreme court with said Justice Blume sitting on his case, this plaintiff courteously informed Judge Blume that he did not feel that the judge should sit in judgment on this case, but the said Blume refused to disqualify himself, or step aside, but sat in judgment and denied the Writ of Prohibition. The Pioneer Carissa Gold Mines Inc. was permitted over the protests of plaintiff to Intervene, and it set up the same void judgment in 50 Wyo 277 as grounds for denying the writ. Judge Blume, as judge, and Chief Justice, joined with a denial of the writ, and held the trespassing Pioneer Carissa Gold Mines Inc in possession of the property of Plaintiff and directed that the lower court in case 4561 sell the property of plaintiff. In the decision, the court this make this pronouncement which plaintiff interpreted as an intimidating threat, that if plaintiff should ever thereafter seek redress for the taking of his property without due process of law, or assert his denial of equal justice in regard thereto, he would be the object of drastic action by the court, towit: Case No 2757-Sept 18, 1956.

"Any further attempt to try to claim any ownership of the foregoing property is a grave abuse of judicial process"

This took away the legal right to even petition for rehearing.

Further the court decreed:

"We are constrained to hold that the relator is not the owner and has no right of possession of the property in

controversy. The Pioneer Carissa Gold Mines Inc is the owner and has the right of possession pursuant to the order of June 7, 1956 of the District Court of Fremont County, Wyoming- assuming a conveyance is or has been made as directed by that court. That the plea of res judicata on the part of respondents and intervenor must be sustained. That the relator is estopped to claim ownership or possession of the property in controversy. And the Writ for Prohibition must be denied."

41 Plaintiff shows the court that the action of the court in the above matter is void first for the bias, prejudice, ill-will, enmity of said Fred H Blume, chief justice presiding therein. Further that it is void for want of jurisdiction in the court to render the particular judgment it did; and is void for excess of jurisdiction to render the particular judgment it did. That the same is a deprivation of the Civil Rights of plaintiff guaranteed by the 14th Amendment to the constitution of the United States; and also the 5th Amendment to the constitution of the United States; and likewise contrary to the Bill of Rights of the Wyoming constitution, especially each of the following sections: Sec 2-6-7-8-9-20-32-33-34 of Art I of that constitution; and sec 3-907 Wyo stat 1945; and the final conclusive judgments of the District Court of Fremont County, Wyo in cases 4182- and 4823 therein; and the supreme court of Wyoming in 40 Wyo 524, and cases 1667 and 1776 of the supreme court. That the deprivation of said rights was under color of law by the above mentioned judgment of the supreme court of Wyoming, in said case No 2757, dated Sept 18, 1956, in said supreme court. And that it was the result of said conspiracy in which all and each of defendants herein took part during the accomplishment of the same.

16] That by reason of the second cause of action plaintiff has been denied the use and enjoymnet of his said properties aforesaid, and the right of possession thereto, and has been deprived of his civil rights as above set forth, under color of law by said judgments of the District Court of Fremont county, Wyoming in said cases 4561 and 7521, hereinbefore set up, and the decision of the supreme court in the Prohibit Case aforesaid, No 2757 of the supreme court, dated Sept 18 1956, and also thru case 50 277 of the supreme court of Wyoming on Oct 7, 1936 also hereinbefore set up, and has been denied the protection of his good name, liberty and freedom and civil rights as hereinbefore set up. As a result thereof plaintiff

has suffered damage in the sum and amount of Seven hundred fifty thousand ($750,000.) dollars as his actual damages.

Wherefore, the law and the premises considered, plaintiff prays judgment that he have and recover of and from defendants on his first cause of action the sum of Seven hundred fifty thousand ($750,000.) dollars as his actual damages; and other proper relief.

Wherefore the law and the premises considered plaintiff prays judgment that he have and recover of and from defendants on his second cause of action the sum of Seven hundred fifty thousand ($750,000.) dollars as his actual damages; and other proper relief.

Wherefore plaintiff prays judgment as part of each cause of action above set forth, that he have and recover of and from defendants and each of them, punitive or exemplary damages in the sum of Two hundred fifty thousand ($250,000.) dollars, to deter defendants and others like them from ever hereafter committing like wrongs, acts, and conduct against plaintiff or any other person or party similarily situated; and for the general good of society that every citizen may hereafter be safe and secure in his equal and constitutional rights to the equal protection of the law, and that none may hereafter be deprived of their life, liberty, or property without due process of law; and that every member of society may ever hereafter enjoy the security of the constitutional guaranties of the 14th and of the 5th Amendment to the constitution of the United States, and as well also the same security and protection under the Bill of Rights of the Wyoming Constitution of Wyoming, and the statues of the state. And for costs, and any other proper relief.

John J Spriggs Sr---Plaintiff

Filed November 20, 1956.

17] Motion To Dismiss Complaint.

The defendant Harry S. Harnsberger moves the Court to dismiss the complaint of the plaintiff because the complaint fails to state any claim against him upon which relief can

be granted.

James A. Greenwood
Bard Ferrall
Carleton A. Lathrop
Attorneys for Defendant
Harry S Harnsberger

Filed December 5, 1956.

[The language of the motions to dismiss the complaint, filed December 5, 1956, on behalf of Fred H. Blume, is substantially identical with that of the motion to dismiss the complaint filed on behalf of Harry S. Harnsberger.]

19] Motion.

The Defendant H. H. Hime moves the Court as follows:

I. To dismiss the action because the complaint fails to state a claim against this defendant upon which relief can be granted.

H. H. Hime

Arthur E. Oeland
Attorney for Defendant

Filed April 11, 1956.

[The language of the motion to dismiss filed December 8 and 12, 1956, on behalf of Pioneer Carissa Gold Mines, Inc., and George B. Colemere, and Spencer J. Lewis, is substantially identical with the motion to dismiss filed on behalf of H. H. Hime.]

22] Motion.

Comes Now W. J. Wehrli, heretofore having entered his appearance herein as attorney for the defendant Spencer J.

Lewis, and informs the Court that said defendant died on the 18th day of February, 1957, and moves the Court that an order be made and entered herein dismissing this case as to said defendant.

Dated this 10th day of April, 1957.

W. J. Wehrli

Filed April 11, 1957.

23] Order Of Dismissal As To Defendant Spencer J. Lewis.

At this day there is presented to the Court the motion of W. J. Wehrli, attorney herein for defendant Spencer J. Lewis, for dismissal of this case as to said defendant for the reason that he died on February 18, 1957, and the Court having considered the motion and being fully advised in the premises:

It Is Ordered by the Court that this case be, and the same is hereby, dismissed as to defendant Spencer J. Lewis.

Dated April 11, 1957.

Ewing T. Kerr
Judge

Filed April 11, 1956.

25] Order Ruling On Motions.

The above entitled action coming before the Court for hearing this 13th day of May, 1957, upon the motion of the complainant to vacate the order herein made dismissing the case as to Spencer J. Lewis and for substitution of Nell Grieve Lewis, Executrix of the Estate of Spencer J. Lewis, deceased; and upon the separate motions of the defendants that an order be made and entered herein dismissing this case as to each defendant on the ground and for the reason that the complaint fails to state a claim against each de-

fendant upon which relief can be granted; and the plaintiff being present and representing himself in person; and defendant Pioneer Carissa Gold Mines, Inc., a corporation, and George B Colemere being represented by W. A. Smith of Smith and Nicholas, their attorneys; and Harry H. Hime being represented by Arthur E. Oeland, his attorney; and Spencer J. Lewis, Deceased, and his Executrix being represented by W. J. Wehrli, his attorney; and defendants Fred H. Blume and Harry S. Harnsberger being represented by Bard Ferrall and Carleton A. Lathrop, their attorneys; and all parties having announced themselves ready for a hearing upon the motions above mentioned, the Court proceeded with such hearing.

26] Upon hearing the motion of plaintiff to vacate the order dismissing the case as to the defendant Spencer J. Lewis and to substitute Nell Grieve Lewis, Executrix of his Estate, as defendant herein, the Court finds that such order heretofore entered herein dismissing the case as to Spencer J. Lewis should be vacated and set aside.

Upon hearing the arguments of counsel upon the motions of the individual defendants that the case be dismissed for the reason that the complaint as to each defendant fails to state a claim upon which relief can be granted, the Court finds that the defendant Spencer J. Lewis and his personal representative and the defendant Fred H. Blume are immune from suit because the said Spencer J. Lewis, now deceased, and the said Fred H. Blume each occupied a judicial office; and as to the said defendant Spencer J. Lewis and his personal representative and the defendant Fred H. Blume, and as to all other defendants, the Court finds that the separate motions to dismiss on the ground that the complaint fails to state a claim upon which relief can be granted should be sustained. And the Court further finds that the prosecution of this case is an attempt to relitigate questions previously litigated in this and other courts of record and upon which final judgments have been entered. The Court further finds that as to the defendant Spencer J. Lewis any cause of action attempted to be set forth in plaintiff's complaint does not survive and that as to such defendant and his personal representative this action should be dismissed on account of the death of the said defendant.

And the plaintiff, after the announcement of the ruling of the Court, having announced in open Court that he desired

to amend the complaint, the Court finds that because of the immunity from suit enjoyed by the decedent Spencer J. Lewis and Fred H. Blume that the complaint cannot be amended
27] in any way as to either said Spencer J. Lewis or his representative or the said Fred H. Blume, but that the Court ought to grant the plaintiff fifteen days from the date of this order in which to submit to the Court an amended complaint as to the remaining defendants if plaintiff desires so to do, and when such amended complaint is submitted, the Court will then determine whether same can be filed or not.

Wherefore, It Is Hereby Ordered That the above entitled action be and the same hereby is dismissed as to all defendants.

It Is Further Ordered That plaintiff, as to the defendants other than Spencer J. Lewis and his Executrix and Fred H. Blume, may submit to the Court for filing an amended complaint within fifteen days from date of this order, and upon such submission the Court shall determine whether or not same may be filed.

To all of which the plaintiff objects and excepts and saves an exception thereto.

Done in open Court this 13th day of May, 1957.

Ewing T. Kerr
Judge

Filed May 13, 1957.

28] Notice Of Appeal To The Court Of Appeals For The Tenth Circuit Under Rule 73 b.

Notice is hereby given that John J Spriggs Sr, plaintiff above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit, from the order of the Court upon the separate motions of defendants, of each of said defendants, Spencer J. Lewis and his executrix, and Fred H Blume, that the case be dismissed as to each of said defendants for the reason that the Complaint fails to state a claim upon which relief can be granted as to each of said defendants;

and for the reason that said Spencer J Lewis and Fred H Blume, are because of their judicial capacities, immune from suit in said case; and further that Spencer J Lewis being deceased the cause of action is not one that survives his death and against his executrix. And further ordering that the Complaint cannot be amended as to each of said defendants. And further the order of the Court sustaining the separate motion of each of the other defendants because the Complaint does not state a claim upon which relief can be granted as to each of said separate defendants, and dismissing the action as to each of said other defendants. And further the order of the court that plaintiff can only amend the Complaint as to each of said other defendants by first submitting his amended Complaint to the Court, upon the submission of which the court shall determine whether or not the complaint as so amended can be filed, all as appears in the order of the court entered in said case on May 13, 1957.

Dated May 17, 1957

John J Spriggs Sr-Plaintiff

Filed May 21, 1957.

[An appeal bond was filed May 21, 1957.]

71] Order Denying Plaintiff The Right To File Amended Complaint.

The Court having carefully considered the allegations contained in the amended complaint presented to this court for filing pursuant to an order of this Court entered May 13, 1957, and the Court being fully advised in the premises doth find:

That on May 13, 1957, this Court made and entered an order sustaining motions to dismiss the original complaint for the reason that said complaint failed to state a claim against the defendants upon which relief could be granted;

The Court doth further find that said order provided that the said plaintiff might submit to this Court an amended complaint within fifteen days from the date of said order as

to certain defendants and after an examination of said amended complaint the Court would then and there determine whether said amended complaint should be filed;

The Court doth further find that the allegations contained in said amended complaint are in substance the same as alleged in the original complaint;

The Court doth further find that the federal question which plaintiff seeks to raise fails in substance and as shown by the allegations of the proposed amended complaint fails to exist; neither does said amended complaint show upon its face that plaintiff's rights under the Federal Constitution have been violated, either by depriving him of his property without due process of law or denying him the equal protection of the law;

72] The Court doth further find that the amended complaint shows upon its face that plaintiff regularly invoked the jurisdiction of the State Courts, where the cases were tried and were fully and finally adjudicated and that the State Courts had jurisdiction over said cases;

The Court doth further find that neither the Fourteenth Amendment to the Federal Constitution or the Civil Rights Acts enacted thereunder permit the relitigation of matters in the United States District Court after the same have been adjudicated in State Courts of competent jurisdiction. It is therefore

Ordered that plaintiff be denied the right of filing his amended complaint for the reason that said proposed amended complaint fails to state a claim against the defendants upon which relief can be granted.

Plaintiff is allowed an exception to this order and ruling.

Dated May 28, 1957.

Ewing T. Kerr
Judge

Filed May 28, 1957.

76] **Notice Of Appeal To The Court Of Appeals Of The Tenth Circuit Under Rule 73 B.**

Notice is hereby given that John J Spriggs Sr, plaintiff above named hereby appeals to the United States Court of Appeals for the Tenth Circuit from the order of the Court sustaining the separate motions of each defendant that the case be dismissed for the reason that the Complaint fails to state a claim against each separate defendant upon which relief can be granted as to each separate defendant; and for the further reason stated in the order that as to Spencer J Lewis, and Fred H Blume the case should be dismissed because each of said two defendants are, by reason of their judicial capacities immune from suit herein, and denying plaintiff the right to amend his complaint as to each of said defendants; and further, that as to Spencer J Lewis, by Nell Grieve Lewis, his executrix, the case should be dismissed because the cause of action does not survive his death. And further from the order sustaining the separate motions as to each of the other defendants for the reason the Complaint fails to state a claim upon which relief can be granted as to each of said other defendants, and dismissing the action as to each of said defendants, And appeals from the further order of the court denying plaintiff the right to amend his complaint only by first submitting to the court the proposed amendment of the complaint, whereupon the court will then determined whether the court will permit plaintiff to amend his Complaint, all as appears in the order of Court entered in said case on May 13, 1957. And plaintiff further appeals from the subsequent order of the court entered in said case May 28, 1957, wherein the court denied plaintiff the right to amend his Complaint against each of said defendants for the reason that the amended Complaint fails to state facts and a claim upon which relief can be granted as against each of said defendants, all as appears in said subsequent order of May 28, 1957 entered in said case.

Dated this May 31, 1957.

John J Spriggs Sr-Plaintiff

Filed June 3, 1957.

[An appeal bond was filed June 3, 1957.]

Spriggs vs. Pioneer Carissa Gold Mines, Inc. et al.

81] Designation Of Points Relied On For Appeal.

Plaintiff having appealed to the United States Court of Appeals, Tenth Circuit from the order of the court herein dated May 13, 1957 and the order of the court herein dated May 28, 1957, designates the points relied on by him in the appeal, to-wit:

1. The court erred in its order of May 13, 1957, sustaining the separate motions of each defendant to dismiss the complaint and case for the reason stated in each separate motion that the complaint did not state a claim on which relief could be granted and dismissing the case as to each separate defendant, all as appears in said order.

2. The court erred in its said order of May 13, 1957, dismissing the action as to each of defendants Spencer J Lewis and his personal representative, and Fred H Blume, and denying plaintiff the right to file an amended complaint as to either of said two defendants for the reason stated in the order that by reason of their holding a judicial office they were each immune from suit herein. And the further reason as to Spencer J Lewis that by reason of his death, the action did not survive his death.

3. The court erred in its order of May 13, 1957 in sustaining the separate motions of each of the remaining separate defendants to dismiss the case as to each of them because the complaint did not state a claim on which relief could be granted as against each separate defendant, and in dismissing the action as to each separate other defendant—all as appears in said order, of May 13, 1957

4. The court erred in its order of May 13, 1957 in denying plaintiff the right to file an amended complaint against each of the other remaining defendants as secured to him by Rule 15 a; and in imposing on plaintiff the requirement that plaintiff must first submit his amended complaint to the court, whereupon the court will then determine whether the amended complaint can be filed—all as appears in said order.

5. The court erred in its order of May 28, 1957 denying plaintiff the right to amend his complaint, and to file the amended complaint, and dismissing the action as to each

defendant, all as appears in said order of May 28, 1957, and for the reasons set forth in the order.

John J Spriggs Sr-Plaintiff

Filed June 12, 1957.

82] Clerk's Certificate.

United States of America.)
) SS.
District of Wyoming,)

I, Capitola G. Allison, Clerk of the United States District Court for the District of Wyoming, do hereby certify that the above and foregoing papers and proceedings, attached to this certificate, are original papers and proceedings contained in the record in said Court in Case No. 4951 Civil, John J. Spriggs, Sr., Plaintiff, vs. Pioneer Carissa Gold Mines, Inc., a corporation, and George B. Colesere, Harry H. Hine, Spencer J. Lewis, Fred H. Blume and Harry S. Harnsberger, Defendants, as follows:

Complaint, filed on November 29, 1956. Motion of defendant Harry S. Harnsberger to dismiss Complaint, filed on December 5, 1956. Motion of defendant Fred H. Blume to dismiss Complaint, filed on December 5, 1956. Motion of defendant Harry H. Hine to dismiss action, filed on December 7, 1956. Motion of defendants Pioneer Carissa Gold Mines, Inc., and George B. Colesere to dismiss action, filed on December 8, 1956. Separate Motion of defendant Spencer J. Lewis to dismiss case, filed on December 12, 1956. Motion for dismissal as to defendant Spencer J. Lewis, filed on April 11, 1957. Order of Dismissal as to defendant Spencer J. Lewis, entered and filed on April 11, 1957. Demand for Jury, filed on May 3, 1957. Order Ruling on Motions, entered and filed on May 13, 1957. Notice of Appeal, filed on May 21, 1957. Cost Bond on Appeal, filed on May 21, 1957. Amended Complaint, received on May 27, 1957. Order Denying Plaintiff the Right to File Amended Complaint, entered and filed on May 28, 1957. Designation of Record for Appeal, filed on May 28, 1957. Designation by defendant Spencer J. Lewis and his Statement of additional Papers to be Included in Record on Appeal, filed on May 31, 1957. Notice of Appeal,

filed on June 3, 1957. Cost Bond on Appeal, filed on June 3, 1957. Designation of Record on Appeal, filed on June 3, 1957. Designation of Points Relied on for Appeal, filed on June 12, 1957.

I further certify that said original record is herewith transmitted to the United States Court of Appeals for the Tenth Circuit pursuant to the Notices of Appeal and Designations of Record on Appeal filed in the above entitled cause by appellant, John J. Spriggs, Sr., and to the Designation of Additional Papers to be Included in Record on Appeal filed on behalf of Appellee Spencer J. Lewis and his Executrix, in said cause.

83] Witness my hand and the seal of said Court on the 25th day of June, A. D. 1957, at Cheyenne, Wyoming.

Capitola G. Allison
Clerk of the U. S. District Court
for the District of Wyoming.

(Seal)

Filed United States Court of Appeals, Tenth Circuit, June 26, 1957, Robert B. Cartwright, Clerk.